

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

NO PROTEST RECEIVED
Release copies to District
Date: [REDACTED]
Surname: [REDACTED]

Contact Person: [REDACTED]

Telephone Number: [REDACTED]

In Reference to: [REDACTED]

Date: [REDACTED]

DO: [REDACTED]
EIN: [REDACTED]

Dear Applicant:

This is in reply to your application for recognition of exemption under section 501(c)(9) of the Internal Revenue Code.

Based on the information you have submitted we have concluded that you do not qualify for recognition of exemption under section 501(c)(9) of the Code.

You are a master trust established to provide benefits to the employees of any employer who joins the [REDACTED] Association established by you and who elects to adopt your plan. The Brokers of Record for the Trust and Plan are [REDACTED] and [REDACTED] and the Plan is marketed by these entities. You were created and developed as a proprietary product for the clients of these entities. The Plan is marketed solely to these entities by client referrals, word of mouth and personal communication. Those marketing the Plan are compensated exclusively by the commissions generated by the sale of life insurance contracts from insurance companies.

You have represented in your letter of [REDACTED] that [REDACTED] is a financial planning and benefits advisory firm. The firm is a registered investment advisor and insurance agent. It specializes in the custom design and implementation of tax-qualified plans, executive compensation programs, financial, tax and estate planning. The main business of [REDACTED] is the sale of insurance products to [REDACTED] is the president of [REDACTED] and the president of [REDACTED] is his daughter.

Participation in this program is available to individuals and businesses in the medical profession located in the tri-state area of [REDACTED] and [REDACTED] who wish to

[REDACTED]

participate in the Plan and Trust. In your letter of [REDACTED] you state that any employee in any clinic or medical office, nurses and employees in personal care facilities, employees of medical and dental laboratories, home health care services and other health related services can join your association. However, such participating employers must be "C" corporations in order to participate in the plan.

The employees of participating employers have no control over the organization and do not participate in any decision made by their employer to join this program. The employer pays dues in the Association on behalf of his employees. In order to participate the employer must complete and adopt the Adoption Agreement and make contributions to pay the premiums on such life insurance contracts. They must also join the [REDACTED]

Although requested we have no documents regarding the operation of the Association. However, in your letter of [REDACTED] you state that the employers, on behalf of their employees pay a yearly association membership fee to the Association. The trustee of the Plan is [REDACTED]. You represented in your letter of [REDACTED], that you have [REDACTED] doctors offices and [REDACTED] employees in your program. However, it is unclear how many highly compensated employees are participating in the program.

Life insurance benefits are provided to the eligible employees of the participating employers through a policy or policies of universal life insurance issued on the life of each employee. The life insurance benefit is based on a uniform percentage of compensation with the applicable multiplication factor being selected by each participating employer for the benefit of its employees. It is anticipated that in the future you may also provide sick, accident or other benefits, as defined in section 501(c)(9) of the Code, for eligible employees of participating employers. The Trustee may also purchase annuity contracts for employees who are either uninsurable or insurable only as substandard risks. All premiums are paid by the participating employer. The policies are held by the Trust. Any employee upon termination of employment may purchase an individual insurance contract for its available cash surrender value.

An employer can voluntarily terminate his participation in the program. To be eligible for a voluntary termination a participating employer must be facing adverse business conditions; experienced a death of any majority shareholder; sold his stock to an unrelated third party; transferred substantially all of the assets of the business or merged with an unrelated third party or terminated his business operations. Termination

can be accomplished by a duly authorized vote of the employer's Board of Directors.

Section 7.02 of the Master Trust provides that the Trustor (the Association) may at any time or times, and without the prior consent of the Participating Employers, the Participating Employees and their Beneficiaries, the Trustee or any other persons or entities, amend the Trust to any extent and in any manner it may deem necessary or advisable by delivering to the Trustee and the Administrator a written notification of which amendment, together with a copy of the resolution of the board of directors of the Trustor adopting the same.

Section 501(c)(9) of the Code provides for the exemption from federal income tax of voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-1 of the Income Tax Regulations provides that for an organization to be described in section 501(c)(9), it must be an employees' association; membership in the association must be voluntary; the organization must provide for the payment of life, sick, accident, or other benefits to its members; and there can be no inurement (other than by payment of permitted benefits) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-2(a)(1) of the regulations provides that membership of any organization described in section 501(c)(9) must consist of individuals who become entitled to participate by reason of their being employees and whose eligibility for membership is defined by reference to objective standards that constitute an employment-related common bond among such individuals. Typically, those eligible for membership are defined by reference to a common employer, coverage under one or more collective bargaining agreements or employees of one or more employers engaged in the same line of business in the same geographic locale. For example, membership in an association might be open to all employees of a particular employer, or to employees in specified job classifications for certain employers at specified locations and who are entitled to benefits by reason of one or more collective bargaining agreements. In addition, employees of one or more employers engaged in the same line of business in the same geographic locale will be considered to share an employment related bond for purposes of an organization through which their employers provide benefits. Whether a group

[REDACTED]

of individuals is defined by reference to a permissible standard or standards is a question to be determined with regard to all the facts and circumstances in the case.

Section 1.509(c)(9)-2(c)(3) of the regulations provides that to be described in section 501(c)(9) of the Code an organization must be controlled by its membership, an independent trustee or trustees, at least some of whom are designated by, or on behalf of the membership.

Section 1.501(c)(9)-3(f) of the regulations provides that the term "other benefits" does not include any benefit that is similar to a pension or annuity payable at the time of mandatory or voluntary retirement. For the purposes of section 501(c)(9) a benefit will be considered similar to that provided under a pension, annuity, stock bonus or profit sharing-plan if it provides for deferred compensation that becomes payable by reason of the passage of time rather than as the result of an unanticipated event.

T.D. 7750, 1977-2 338 introduces and discusses the final regulations under section 501(c)(9) of the Code. In discussing membership requirements it states that "allowing section 501(c)(9) to be used as a tax-exempt vehicle for offering insurance products to unrelated individuals scattered throughout the country would undermine those provisions of the Internal Revenue Code that prescribe the income tax treatment of insurance companies."

Based on the information submitted, we are unable to conclude that your members have an employer related common bond for the purposes of section 501(c)(9) of the Code.

Whether a group of individuals satisfies the affiliation or employer related common bond requirements of section 501(c)(9) of the Code is determined with regard to all facts and circumstances. As expressed in T.D. 7750, *supra*, section 501(c)(9) was not designed to establish exemption for an insurance company. By requiring that the members of a VEBA have an employment related common bond the type of organization that can qualify for exemption under this subsection is limited.

The information you have submitted indicates that your membership is open to anyone in the medical profession. The types of employment listed are extremely varied and go beyond the medical profession to include laboratory workers and providers of any health service. Therefore, it appears the only common employment related bond your members may have appears to be through their participation in your benefit program and the Association. T.D. 7750, *supra* clearly indicates that VEBA's are

[REDACTED]

not supposed to be the rough equivalent of an insurance company. By making insurance available to such a broad group of unaffiliated organizations indicates that you are in the business of providing insurance and such an organization cannot qualify for exemption under section 501(c)(9). This conclusion is further established because your members will apparently be solicited by the plan sponsor who formed this association. Rather than having bonded together as an association to seek insurance. Accordingly, we have concluded that you appear to be more in the nature of an insurance company than a VEBA and do not qualify for recognition of exemption under section 501(c)(9) of the Code.

In addition, we are unable to conclude that all of the benefits you will provide will be qualifying benefits within the meaning of section 501(c)(9) of the Code.

Your program provides that in the event an individual terminates his employment relationship with a participating employer or an employer terminates his or her contractual arrangement with you or the association each participant is entitled to purchase the policy at the cash surrender value. This right is present in the event of either voluntary or involuntary terminations.

Section 501(c)(17) defines a severance benefit as one occurring in the event of involuntary termination of employment. Although a severance benefit is a permissible section 501(c)(9) benefit, because you permit the transfer of the policy upon voluntary termination, this aspect of your program is more in the nature of a savings or retirement plan. Savings or retirement benefits are not qualifying benefits under section 501(c)(9) of the Code. Therefore, it is clear that certain of the benefits you provide are not qualifying benefits within the meaning of section 501(c)(9) of the Code.

Furthermore, it does not appear that your employee/members control your activities. Although your trustee is [REDACTED] it appears that your activities are controlled by the Association, which appears to be controlled by your Brokers of Record. The president of the Association appears to have been appointed by the Brokers of Record and participating employers appear to control the purse strings. Section 7.02 of the Master Trust provides that the Trustor (the Association) may at any time or times, and without the prior consent of the Participating Employers, the Participating Employees and their Beneficiaries, the Trustee or any other persons or entities, amend the Trust to any extent and in any manner it may deem necessary or advisable. This is not the extent of membership control contemplated by section 1.509(c)(9)-2(c)(3) of the regulations.

[REDACTED]

Accordingly, as stated above, we have concluded that you do not qualify for recognition of exemption from federal income tax under section 501(c)(9) of the Code. Therefore, you are required to file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your principal officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your principal officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Procedures.

If we do not hear from you within 30 days, this ruling will become final and a copy of it will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status of the filing of tax returns should be addressed to that office.

When submitting additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following symbols on the envelope: OP:E:EO:T:2, Room 6541. These symbols do not refer to your case but rather to its location.

[REDACTED]

Sincerely yours,

[REDACTED]

Chief, Exempt Organizations

[REDACTED]

[REDACTED]